

In the Matter of Merchant Mariner's Document No. Z-188706
Issued to: FRANK ANTHONY LEONARD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FRANK ANTHONY LEONARD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 11 July, 1952, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-188706 issued to Frank Anthony Leonard upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as an able seaman on board the American SS SEA THUNDER under authority of the document above described, on or about 3 April, 1952, while said vessel was in the port of Ras Tanura, Saudi Arabia, he assaulted and battered Third Mate Clinton Truman; he failed to stand the 0000 to 0400 port watch due to excessive drinking; and he failed to turn to at sailing time at 0430 hours.

At the time of service of the charge and specifications on 9 July, 1952, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Since Appellant did not appear at the time and place designated for the hearing, the Examiner entered a plea of "not guilty" to the charge and each specification proffered against Appellant. The hearing was then conducted "in absentia."

After the Investigating Officer had made his opening statement, he introduced in evidence excerpts from the official log book of the SEA THUNDER as well as the testimony of the Master and Third Mate.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-188706, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months' outright suspension and the balance of three months to be probationary for a period of one year.

From that order, this appeal has been taken, and it is urged that the evidence does not warrant the suspension imposed; and Appellant did not appear at the

hearing because he was told by the Master, in the presence of the Shipping Commissioner, that all of the charges would be dropped.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage including the date of 3 April, 1952, Appellant was serving as an able seaman on board the American SS SEA THUNDER and acting under authority of his Merchant Mariner's Document No. Z-188706 while the ship was in the port of Ras Tanura, Saudi Arabia.

On the morning of 3 April, 1952, the Third Mate came on deck for the 0000 to 0400 watch and noticed that Appellant was not standing his 0000 to 0400 watch. Another seaman in the watch section was sent to get Appellant and he came staggering out on deck in an intoxicated condition at about 0100. The Chief Mate was assisting in the operation of topping off the tanks with a cargo of oil. He told Appellant to go back and turn in because he was drunk. When Appellant replied with obscene language and refused to go below, the Chief Mate left to call the Master. Appellant was then told to turn in by the Third Mate just before he turned his back to Appellant to check the rise of the oil in one of the tanks. While the Third Mate was occupied in this manner, Appellant struck the Third Mate on the side of his face. The blow was hard enough to daze the Third Mate temporarily and to damage his bridge work. A seaman grabbed Appellant as the Master and Chief Mate arrived on the scene. Appellant looked defiantly at the Master but did not say anything to him before the Master ordered another seaman to take Appellant to his forecabin.

At about 0400 when the ship was getting underway, Appellant failed to appear at his after mooring station to assist in handling the lines.

There is no record of any prior disciplinary action having been taken against Appellant.

OPINION

Proof of the assault upon the Third Mate is alone sufficient to justify the suspension imposed, and the evidence clearly shows that this was a completely unprovoked attack which occurred while the Third Mate was on watch and busily engaged in the completion of taking on the cargo of oil. Because of these circumstances as well as because he struck one of the ship's officers, Appellant was fortunate that a much more severe order was not imposed against his document.

There is testimony by the Master that at the end of the voyage on 9 July, he agreed with Appellant and other seamen that he would contact the Shipping Commissioner and drop the charges which appeared in the log against them. But Appellant states in his appeal that he found out the next day, 10 July, that the Master did not go to the Shipping Commissioner's Office in order to carry out the agreement. Therefore, he had no basis for believing that the hearing would not be conducted on 11 July in accordance with the charge and specification sheet which was served on him by the Coast Guard Investigating Officer on 9 July. Nevertheless, Appellant contends that he did not make

any attempt to attend the hearing which was prolonged from 1000 to 1630 on 11 July for his benefit. By this course of action, Appellant waived his right to submit a defense to the allegations contained in the charge and specifications.

ORDER

The Order of the Examiner dated at San Francisco, California, on 11 July, 1952, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 28th day of November, 1952.